IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 52 of 1996
Reserved on 18.6.2007
Date of decision 6.8.2007

UCO Bank Vidhan Sabha Branch Appellant

Versus

Ramesh Thakur and another Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellant: Mr.K.D.Sood, Advocate.

For the Respondents: Mr.Ramakant Sharma, Advocate, for respondent No.1.

Mr.Rakesh Jaswal, Advocate, for respondent No.2.

Rajiv Sharma, J.

This regular second appeal arises out of the judgment and decree passed by the learned District Judge, Shimla on 2.11.1995 in Civil Appeal No.109-S/13 of 1994.

The brief facts necessary for the adjudication of the second appeal are that the appellant-plaintiff hereinafter referred to as the plaintiff for convenience sake, had filed a suit in the court of Sub Judge Ist Class (2), Shimla to recover a sum of Rs.46,222.00 from the respondents and interest thereon. The suit of the plaintiff was resisted by the respondents by filing a written statement. The respondents took various preliminary objections such

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

as locus standi, limitation, maintainability etc. and on merits it was alleged that the defendants had liquidated the loan amount and nothing was due.

The trial court on the basis of the pleadings of the parties had framed the following issues:-

1. Whether the plaintiff is entitled to suit amount? OPP
2. Whether the suit is not maintainable as alleged? OPD
3. Whether N.L.Arora has no locus standi to file this suit ? OPD
4. Whether the suit is barred by limitation? OPD
5. Whether the suit is not maintainable as alleged in preliminary objection No.4? OPD
6. Relief.

The trial court had given the following findings on the aforesaid issues:

Issue No.1 No

Issue No.2 No

Issue No.3 No

Issue No.4 Does not fall for decision in view of finding on issue no.1.

Issue No.5 No

Relief Suit dismissed.

The trial court had dismissed the suit of the plaintiff on 25.8.1994. Feeling aggrieved by the judgment and decree dated 25.8.1994, the plaintiff filed an appeal before the learned District Judge, Shimla on 5.10.1994. The learned District Judge had framed the following points for determination:-

1. Whether the plaintiff bank is entitled to the amount as alleged in the plaint, if so its effect?
2. Whether the principle of res judicata is attracted in view of the earlier decision of the same court on the same cause of action between the same parties on 25.8.1994, if so its effect ?
3. Final order.

The learned District Judge had recorded the following findings on the aforesaid points:

Point No.1 No

Point No.2 Yes

Final order Appeal dismissed per operative part of the judgment.

The learned District Judge had dismissed the appeal on 2.11.1995 and the judgment and decree passed by the learned trial court dated 25.8.1994 was upheld.

This second appeal was admitted by the Court on the following substantial questions of law:

1. Whether the suit of the plaintiff appellant was liable to be dismissed on the ground of res judicata more particularly when civil suit No.33/1 of 1991/90 decided on 25.8.1994 Ramesh Thakur v. UCO Bank had been dismissed and there was no finding in the said suit that the suit amount of Rs.43,279.35 paise was not payable?

2. Whether the court below has excluded from consideration the admissible oral and documentary evidence and raised presumption and inference by not taking into consideration the statutory presumptions arising under the Bankers Books of Evidence Act?

3. Whether the onus of proof to discharge the burden and presumptions raised under the Bankers Books of Evidence Act lay on the defendants and had been discharged so as to absolve themselves of such liability due to the plaintiff?

I have the learned counsel for the parties and have also gone through the record of the case.

All the substantial questions of law being interconnected are taken up together.

Sh.N.L.Arora the Manager of the Bank had examined himself as PW-1. He had stated that for getting the cash credit limit the defendant had furnished to the bank guarantee deed Ex.PA and that he had also executed hypothecation deed Ex.PB, and Pronote Ex.PC and Ex.PD. Romesh

Thakur, defendant No.1, had appeared as DW-1. He had testified that he took a cash credit limit of Rs.32,000/- and had repaid the entire amount. He further deposed that he had made the final payment to the plaintiff bank on 3.5.1990. The Bank had not produced ledger book on record and the Sub Judge had also made an observation that no officer/official from the Bank had come to assist the court. The respondent had filed a civil suit No.31/1 of 1991/90 which was decided by the trial court on 25.8.1994. The trial court in the civil suit No.31/1 of 91/90 had framed the following issue:

Issue No.1 Whether an amount of Rs.43279.35 paise has been illegally shown to be due against the plaintiff by the defendants as alleged? OPP

The trial court had come to the conclusion that the entry of interest of Rs.43,279.35 paise as shown on 3.5.1990 was not correct. The bank had not challenged the findings recorded by the trial court in civil suit No.31/1 of 1991/90. The judgment dated 25.8.1994 has thus attained finality. The Bank had neither produced on record the correct entries nor the entries made therein were explained. Moreover, it was incumbent upon the Bank to produce the entire record during the trial and the entries made therein were required to be proved in accordance with law. The suit filed by the plaintiff before the learned Sub Judge was barred by principle of res judicata.

The findings given by the courts below are finding of fact and thus cannot be interfered in second appeal. There is no question of law much less substantial question of law involved in this second appeal. Accordingly finding no merit in this appeal the same is hereby dismissed.

August 6 ,2007(g) **(Rajiv Sharma), J.**